

REMARKS/ARGUMENTS

The rejections presented in the Office action dated June 9, 2010 (hereinafter Office action), have been considered but are believed to be improper. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Applicant respectfully traverses the § 112, second paragraph, rejection of claims 19-24. The Office action asserts that there is insufficient antecedent basis for the term “the apparatus” in claims 19-24. However, each of claims 19-24 depends upon independent claim 17, which recites “A computer program including computer program code stored on a computer readable medium, the computer program code configured to, with a processor, cause an apparatus at least to:” and “perform data streaming communication between the apparatus and a server” (emphasis added). Thus, claim 17 provides antecedent basis for the term “the apparatus” in claims that depend therefrom. Since proper antecedent basis is provided, Applicant submits that the rejection is improper and accordingly requests that the rejection be withdrawn.

Applicant respectfully traverses the § 103(a) rejection based upon the teachings of U.S. Patent No. 7,031,746 to Na *et al.* (hereinafter “Na”) as modified by those of U.S. Patent No. 5,982,774 to Foladare *et al.* (hereinafter “Foladare”) because the asserted teachings alone, or in combination, fail to teach or suggest each of the claimed limitations. For example, neither of the references has been shown to teach or suggest transmitting a transmission suspension message to a server over the radio interface provided by the network infrastructure, as claimed. The Examiner acknowledges at page four that Na does not disclose the claimed transmission of a suspension message. However, the relied-upon portion of Foladare also fails to teach or suggest such limitations. Foladare teaches that a user “accepts” a call by clicking on an icon to notify an Internet Access Provider (IAP). However, Foladare’s user terminal 101 is connected to the IAP through a Local Exchange Carrier via a POTS telephone line. There is no teaching or suggestion that a suspension message is transmitted over a radio interface, as claimed.

Moreover, neither of the asserted references has been shown to teach or suggest that a device performing data streaming communication with a server generates a transmission suspension message for the server on the basis of a first mode change received via the device's user interface, as claimed in each of the independent claims. While the Examiner suggests that Foladare teaches discontinuing an Internet connection upon acceptance of a telephone call via a terminal connected over a wired telephone line, Foladare does not teach or suggest that the wired terminal was performing data streaming communication. Rather, Foladare teaches that the Internet connection is disconnected (Col. 3, lines 42-45) while the user accepts the telephone call and then, once the line is returned to an on-hook state, the IAP reconnects the Internet connection to the previously disconnected URL address (Col. 4, lines 1-15). If a data streaming communication, as claimed, were disconnected and later reconnected as taught by Foladare, a user would lose or miss the portion of the stream that occurred during the disconnection. Neither Na nor Foladare has been shown to teach or suggest a device that corresponds to the claimed invention.

In addition, Applicant maintains that Na fails to teach at least generating a transmission suspension message for a server on the basis of a first mode change command, as claimed in each of the independent claims. Instead, Na teaches that when a voice call request is detected, reception of the multimedia broadcast is continued, but the decoding of the audio signal of the received multimedia broadcast is discontinued for the duration of the voice call (Figs. 2, 3, 4, 5, blocks 221, 315, 431, 519). While the receiving device discontinues decoding the audio signal of the received broadcast, the broadcast signal is still received and the video portion is viewed during the voice call (e.g., Col. 1, line 59 – Col. 2, line 10 and Col. 8, lines 54-63). Thus, in direct contrast to the claimed invention, Na continues to receive and process the digital multimedia broadcast despite a voice call being accepted/initiated (asserted as corresponding to the claimed first mode change command generated by the user). Moreover, Na is directed to operations internal to the mobile terminal and does not suggest sending a message to a server, as claimed. Since Foladare has not been shown to teach or suggest communication with a server external to a network infrastructure providing a radio interface connection and Na fails to teach or suggest

communication with a server, as claimed, any combination of the teachings of Na with those of Foladare would not correspond to such limitations. Thus, the § 103(a) rejection cannot be maintained. Applicant accordingly requests that the rejection be withdrawn.

Dependent claims 3-8, 11-16, 19-24, 26, 27, and 29 depend from independent claims 1, 9, 17, and 25, respectively. Each of these dependent claims also stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the above-discussed combination of Na and Foladare. While Applicant does not acquiesce to any particular rejections to these dependent claims, including any assertions concerning descriptive material, obvious design choice and/or what may be otherwise well-known in the art, these rejections are moot in view of the remarks made in connection with the independent claims above. These dependent claims include all of the limitations of their respective base claims and any intervening claims and recite additional features which further distinguish these claims from the cited references. “If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious.” MPEP § 2143.03; *citing In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, dependent claims 3-8, 11-16, 19-24, 26, 27, and 29 are also patentable over the asserted combination of Na and Foladare.

Moreover, Applicant traverses the § 103(a) rejection because the asserted modification of Na would improperly undermine the teachings of Na. If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); MPEP § 2143.01(V). As explained above, Na is directed to a device that receives a multimedia broadcast during the existence of a voice call to allow a user to continue to view the broadcast video/text while taking the voice call. Modifying the device of Na to instead disconnect the multimedia broadcast as taught by Foladare (Col. 3, lines 42-45) would directly undermine the objective of allowing Na’s user to view the broadcast while taking/making a voice call. Since the asserted modification undermines the objective of Na, such a modification cannot support the § 103(a) rejection. Applicant accordingly requests that the § 103(a) rejection be withdrawn.

It should be noted that Applicant does not acquiesce to the Examiner's statements or conclusions concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, non-functional limitations, intended use, common knowledge at the time of Applicant's invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner's characterizations, conclusions, and rejections in future prosecution.

Applicant further notes that the reference and citation to "Griffin" at pages four and seven are in appropriate since the rejection is not based upon a reference identified as "Griffin".

Authorization is given to charge Deposit Account No. 50-3581 (KOLS.101PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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